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ABSTRACT

Lawyers are needed by schools for many more purposes than merely to execute legal documents. This set of notes for a conference presentation considers lawyers' roles in advising on the legal issues involved in the following: (1) business transactions typically encountered by schools (state contract review, state lease, pool lease, nonprofit organizations, insurance questions); (2) answering legal questions relating to personnel policies and actions (grievances, corporal punishment, theft, teachers transporting children in personal vehicles); and (3) helping schools respond to parents (collection of money, playground injuries, administration of medicine, bankruptcies, health, sexual abuse). (PGD)

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1985 ACLD Conference
Variety School Presentation

GET A LAWYER BEFORE IT'S TOO LATE

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GET A LAWYER BEFORE IT'S TOO LATE

So why do we need a lawyer? On the surface, one may think to execute legal documents, but what is behind the first impression is what we want to share--there is much more.

There are several categories in which we can place the services of a lawyer at School.

1. Legal routine business transactions
   a. State contract review
   b. State lease
   c. Non-profit organization
   d. Pool lease
   e. Non-profit organization leasing our bus
   f. Insurance questions
2. Legal questions relating to personnel
   a. Grievances
   b. Corporal punishment
   c. Theft
   d. Teachers transporting children in personal vehicles
3. Legal questions relating to parents
   a. Collection of money
   b. Playground injuries
   c. Medicine prescribed--parents having joint custody and disagreeing about whether the child should be taking it

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d. Bankruptcies

e. Notes for payment and enforcement

f. Health

g. Sexual issues

Working closely with your school lawyer facilitates gathering of necessary data which may be needed if a situation becomes a problem. Without legal counsel, the Board of Directors and employees of the Board are at risk.

Objective of the session is to share:

1. A system of routinely maintaining information on situations which may develop into a problem;
2. Identifying those situations which may be volatile--(the initial incidents frequently seem insignificant);
3. Encourage immediate notification of your lawyer when a situation is developing into a potential problem, to facilitate communication of your plan of resolution to avoid further complication the case from a legal standpoint.

Within the past several years of working with this system, the Executive Director, the Lawyer and the Board have resolved routine issues effectively and handled some "would you believe" stories.

I. Legal Routine Business Transactions

A. Our building stands on State property and was, in fact, built by the State through a

Grant-in-Aid. The legal efforts to develop a lease may not affect other non-profit schools in exactly the same way; however, various codes, community action groups and requirements of lease may, in fact, limit your future activities. A lawyer who understands your program can attempt to include or delete wording which will allow you flexibility. In some cases, there are "fine lines" and the Board and Executive Director need to know where those lines must legally he held. When our lease was first negotiated, we made use provision broad, so that, e.g., facilities could also be used for continuing education of staff. That use was deleted, with state saying use was limited to education for children with learning disabilities. That, coupled with early and vociferous neighborhood opposition leads us to a narrow reading of use provision.

1. Example: Use of School only for children;
2. Can organization pertaining to helping children meet and use building. Technically maybe not;
3. Can program benefiting staff be offered--example: aerobics. No;
4. Building rental;
5. Projects designed to expand services to

children, but altering land--playground equipment. Ok, within limits. Sometimes need to get state approval, if a "major" project, which requires many hours of permit processing and possibly public hearings in Hawaii.

B. At the School, monies are received through an agreement with the State of Hawaii. These are legal documents that require legal transaction with the State Attorney General (?) to release funding.

1. What are our duties?;
2. Can we comply, i.e., sufficient manpower, resources to meet job and avoid breach?;
3. What other things are necessary to comply. e.g., provision in charter that school can transact business with the government, non-discrimination, e.t.c.;
4. What is a breach as defined in the contract;
5. What remedies are there for government agency and for school in case of breach?

C. Contracts for use of other services and guidelines to other non-profit organizations on how to protect themselves.

1. Insurance coverage on each situation sometimes easier to check with insurance carrier;

liability insurance (amount and scope of coverage) is always a consideration, especially when school grounds or property are used and someone may potentially be injured (even if only a slip and fall).

2. Utilization of vehicles purchased with Department of Transportation money with restrictions--bus rental. Technical requirement vs practical considerations. Lawyer can tell you what document says and what consequences are if you do not comply. It is up to you to decide what the risks are and weigh against benefits of contemplated action--e.g., technically bus which is federally funded is to be used only for school.

II. Legal Questions Relating to Personnel

A. Transporting students in a personal vehicle--insurance of School and/or insurance of individual staff member using personal vehicle.

B. Corporal punishment--even if not permitted in handbook, the fine line cases are dangerous. In Hawaii, corporal punishment is not allowed. In addition, parents do not want it. In our insurance policy, corporal punishment is not covered, but actions within scope of employment are. To avoid misunderstanding, possible write

down policy regarding use of restraint and have parent acknowledge policy in writing and agree to its use and waive claims for injuries (maybe at I.E.P., conference).

C. Grievances and the Board--What's fair? This sounds cynical, but it's true, what is fair is what the parties agree to and is not against the law. Almost always decided on a case by case basis.

1. Resignation: Employee not performing and, in fact, may be in need of mental health care, but under a "contract";
   a. Title VII-discrimination;
   b. Damage to person's reputation if publicized;
   c. Was firing done for reason set forth in contract or was it a wrongful firing, allowing suit for damages and/or reinstatement; and
   d. Unemployment compensation (does firing come within statutory definition of "cause" so there is no employer liability for unemployment benefits?).

How else can you ease someone toward a voluntary resignation?

I have a several-step process personally.

a. Be sure you document <u>there is a concern</u>

for students by direct observation;

b. Offer support and work with individual--keep notes and ____ (lots of time it works);

c. Involve others to help, if appropriate, so it's not open to "personality";

d. Verbal warning of concerns and review School objectives, efforts to help--what can be done to help you meet School objectives?;

e. Follow-through on staff members' recommendations;

f. Written warning requiring change--outline what if's per Board policy and help provided;

g. Document continued problem and continued help efforts; and

h. Recommend they evaluate what may be to their advantage prior to Board review. If you have the time and if the children or program are not seriously endangered, ok, if not, you need to speed up the process.

2. "I quit syndrome" and claim forced out or fired;

a. Note-Unless it is an unusual circumstance, I would not rehire if someone "quit"

(no real legal basis for this personal policy); and

b. If Director is not aware of problem, meet and check why. Document your efforts to meet their requests or inability to do so. Go back and document your regular efforts with individual to stay in touch with their feelings and opinions. My process:

1. Regular meetings rotating all staff with basic format.
2. How do you think it's going at School?
3. How about your co-worker?
4. How about your materials?
5. What can I do to help you?

D. Theft--example of "would you believe".

1. Staff member invites dealer to visit school with "wares". (Legal issues,--Who is responsible if something is missing? How can you trust dealer--set up? What if it's a staff member--could dealer sue School, etc.). Technically School could be liable for activities occurring on school property, if people have permission to be there. Possible defense is trespass if they did not have permission. Also, get a waiver and release from liability;

2. Ring is missing. Right to search property, person? Searches could be done only with consent and even then possible risky and must be limited. Possible labor problem of harassment unless all are subjected to same treatment. Law enforcement officials need search warrant so evidence is useable. Cannot force it. Might be circumstantial evidence of guilt but you cannot publish this--possible defamation;
3. What if someone refuses? What if Executive Director is asked to meet with suspected individual? What if the "return it and no questions asked" routine is tried? Ok to offer reward;
4. School legal position to dealer. School fine line of "harassing" staff;
5. Continuation of thefts and now other things noticed missing, from floor cleaner (identified as missing by custodian) to TV. Steps to identify individual--change locks--personnel moral!;
6. Call from Service Station:
   a. Custodian wanted him to work on her car and list the school bus license on credit card. She indicated it was all

OK with school when questioned. President indicated to Executive Director we should see what repairs she reported were needed on bus. Repairs she told me were the same ones Service Station had identified as needed on her car. Called law enforcement officials (alias name). Minimum repairs were made on her car. Service Station would not release until cash from her;

b. Her roomate began to call Executive Director saying custodian was ill or had a second job and would be in at night to clean the school; and

c. Custodian was asked to meet with Executive Director. Consulting Psychiatrist assisted by offering to attend--as did several other Board members. ____ was taken, and then she agreed to meet Executive Director.

1. Legal issues.
2. Then what if she denies it?
3. How do you request resignation?
4. What benefits to custodian?
5. What possible legal issues could she take against School--entrapment?

6. What about ring and all other items?
7. How could we get registration back? (I recall she had that, too)
8. How do we make claims on our insurance? (TV, etc.) How does insurance define theft? What is deductible? What if any, is minimum amount of claim?
9. What danger is there to staff from her, and legally how are we protected?
10. How do we sever her so as not to have to pay unemployment?
    a. Get <u>all</u> the facts, call law enforcement officials;
    b. Get testimony of suspect, <u>with</u> a witness who could also testify;
    c. Entrapment should only be if employee was found to have engaged in the illegal activity at instigation of those prosecuting;
    d. Can ask questions so that person is required to admit guilt of which you already have evidence;
    e. Even without her admission, in this case, probably enough evidence to fire for cause;

f. Careful regarding defamation--who you tell what to, especially regarding other thefts. No evidence regarding this;

g. If worried about some kind of reprisal notify law enforcement officials. Some (usually short-term) arrangements can be made for law enforcement officials to patrol; and

h. Is there a possible Title VII (discrimination) issue?

III. Legal Questions Relating to Parents

A. Non-profit school--scholarship through committee placing them on sliding scale. Efforts to collect and legal actions possible when normal billing. Executive Director's letters and personal pleas don't do any good. Legal "notes" to formalize payments due.

1. Collection agency-If amount is relatively small and lawyer is not equipped to grind these out it may be more cost effective to send to collection agency where you will be charged a percentage of claim. Recovery of some is still better than $0;

2. Small claims court-In Hawaii can do without lawyer, limit is $5000.00, requires staff or administrative time to go to court even after get judgment, still have to collect;

3. Garnish wages-In Hawaii, usually after get judgment unless unusual circumstances; state and federal employees are exempt;

4. Military can't garnish-Exempt from garnishment; rotation problem; how to find them; use allotment check method;

5. Bankruptcies-Be sure to file proof of claim, review plan. Determination must then be made, if plan unacceptable, whether cost of objecting is outweighed by benefit (i.e., cost of objection vs. amount of claim).

B. How do you say "no thanks" to a parent who tries to bring in money in a unique manner?

1. Recommended publish notice in newspaper--notice of nonresponsibility (this course recommended by law enforcement officials), cost factor, but gets us out of third party responsibility to some extent;

2. Another alternative--letter to defender to cease and desist--it may not work, still have potential liability and potential that irate parent may react and/or retaliate.

C. Playground injuries.

1. Supervisors required; however, policy to be near equipment and supervise is open-ended as to quality--adequacy. Equipment designed to teach, but sand erodes, wood has splintered, sprinkler heads installed have been altered, bike trail, roots emerge under sand and can't be seen;

a. Do you help children learn to play or for legal issues, limit activities?

b. Can you ever have enough coverage? and

1. Talk to insurance man--waiver agreement.

c. If child deliberately places self at risk could you notify parents and not let child onto playground? Licensing requests regarding amount of P.E. or physical activity?

D. Health Problems.

1. Schools and legal issues.

a. School has no RN or LPN on staff, has consulting Dr. on Board; and

b. Responsibilty of staff to identify health symptoms and take appropriate actions.

1. What if we didn't identify? Child is under custody and control of school; I would say if you don't notify parent and/or emergency unit you are negligent in care of child. Question is who to call first? A fine line in exercising discretion. What if we noted and didn't report, or follow through to reach parents, and decision over parents request to put on Bus? Again, you are responsible for care of child. Risk to child vs. directions in writing from parents.

2. Is it better to be safe than sorry? Yes. Danger if you don't have accurate information on file. Who is at fault? How far do you

go to get it? Forms should stress to parents how important information is; nonresponsibility for inaccurate information; maybe at periodic conference ask for update. What happens when NONE of the contacts can be reached? One of the contacts, should be physician; if he/she cannot be reached you should be physician; if he/she cannot be reached you should state parent gives permission (with signature) that School has permission to send to any doctor.

E. Medication administration.

1. Routine--forms, process of approval, Professional Advisory Committee, delivery of medication to school (on buses?), control of medication in school, recording and administration of at school, field trips;

2. A typical--"would you believe"--divorced couple on extremely different sides of the fence on medication--involvement of pediatrician, primary care with school, consulting psychiatrist and legal.

a. Here question was in a joint custody, who had control of medication for child--mother or father?

b. Suggestion--since not life-threatening to child notify parents in writing would discontinue medication <u>until they</u> direct in writing what should be done; and

c. If life-threatening, perhaps child should be suspended from school.

F. Sexual abuse--exposure, etc., on bus.

1. Legally bus issue, however, school also can get in middle. A teacher acted without authority and notified parent child stood on seat and exposed himself. Based on conversation of another child who reported it to Aide. Child didn't do it;

2. Legal issues--Bus was called to clarify event to top people. Teacher could have alerted other parents. Teacher falsely accused child. Parent at first believed it and was hard on child, before determining that story was false. Legally, parent could .....? and

a. Licensing revoked or suspended?

Perhaps some tort liability--false accusation.

3. When and how does a school alert lawyer to be alert to possible issues?

   a. A lot of these kinds of issues can be averted or handled by good PR, effort by Executive Director, <u>but</u> keep lawyer informed just in case.